

## The United States District Court Of Rhode Island Reaffirms That Subjective Beliefs Are Insufficient To Establish An Implied Attorney-Client Relationship

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Professional Liability Litigation

### By Peabody & Arnold on February 17, 2019

On February 4, 2019, Attorneys Jennifer L. Markowski and William R. Covino obtained summary judgment dismissing legal malpractice, breach of fiduciary duty, and misrepresentation claims against a lawyer and her firm. The plaintiff alleged that the lawyer represented both him and the lawyer's longtime friend in the formation of a business and that the lawyer placed her friend's interests ahead of the plaintiff's. The plaintiff further alleged that the law firm subsequently sought to cover up their lawyer's malfeasance by knowingly asserting false representations in a counterclaim in state court litigation.

In granting summary judgment, the United States District Court of Rhode Island agreed that the claims must be dismissed because it was not objectively reasonable from the evidence to conclude that the Plaintiff had an express or implied attorney-client relationship with the lawyer relative to the formation of the business entity. The Court reasoned that the totality of circumstances, including the undisputed facts revealed that unlike the Plaintiff's friend and business partner, the lawyer had no pre-existing relationship with the Plaintiff, was never asked by the Plaintiff to represent him in the formation of the business, was never told by the lawyer that she would represent him in the formation of the business, never corresponded or communicated with the lawyer via telephone about the formation of the business, and never received individualized legal advice about the formation of the business. Ultimately, the Federal District Court reasoned that the Plaintiff's subjective belief that he was represented by the lawyer because he was present during discussions about the business and was represented by the lawyer in other matters was insufficient. Moreover, the Court further recognized that any misrepresentation claim arising out of the contentions made in the counterclaim in the underlying state court litigation was barred by the litigation privilege, which provides absolute immunity to lawyers for publishing libelous matter in pleadings filed in judicial proceedings where the statements are material, pertinent or relevant to the issues therein. The Federal District Court recognized that the privilege has been further expanded to apply to all civil liability, including, as here, claims associated with the attorney's function as an advocate.

The entire decision may be found at [Furtado v. Oberg](#), 2019 WL 430893 (D.R.I. 2019).